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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

JUN 30 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
U S WEST Communications, Inc. Petition ) CC Docket No. 96-149  
for Forbearance from Application of )  
Section 272 of the Communications Act of )  
1934, as Amended, to Previously )  
Authorized Services )

**SUPPLEMENTAL PETITION FOR FORBEARANCE**

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June 30, 1997

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**SUPPLEMENTAL PETITION FOR FORBEARANCE**

U S WEST Communications, Inc. ("U S WEST") submits this Supplement to its pending Petition for Forbearance from the application of Section 272 of the Communications Act to U S WEST's provision of E911 service.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

In this Supplemental Petition, U S WEST provides a description of E911 service. We then demonstrate that the Petition meets the criteria of Section 10 of the Act and that granting forbearance would serve the public interest by enabling U S WEST to provide this vital service in the most efficient, economic manner.

**II. DESCRIPTION OF E911**

E911 service provides routing for emergency calls to ensure a rapid response by the appropriate public-safety agency (police, fire, rescue).

When a caller dials "911," the serving wire center automatically routes the call to a "911 Router," which may reside within the serving wire center, but will

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<sup>1</sup> U S WEST Communications, Inc. Petition for Forbearance, filed Mar. 14, 1997 ("Petition").

more likely be located in a distant central office. Depending on switch type, the 911 Router will either consult an internal look-up table to determine which Public Safety Answering Point ("PSAP") serves the location of the calling telephone number, or it will send a query message, including the caller's telephone number, to a database to obtain the identity of the appropriate PSAP. In either case, the Router will then route the call to that PSAP, which is located on premises selected and controlled by the public-safety agencies or by a governmental entity created specifically to operate the PSAP. The PSAP equipment is deregulated customer premise equipment ("CPE").

The call is answered by an attendant at the PSAP. Simultaneously, the PSAP launches a query to an ALI/DMS (Automatic Location Identification/Data Management System) platform, which returns the following information to the PSAP:

- name of the subscriber associated with the telephone number from which the call was placed;
- the address of that subscriber;
- the public-safety agencies serving the address; and
- where appropriate, location information.

Location information typically includes apartment, suite, or room number, and it may indicate the presence of a telecommunications device for the deaf ("TDD") on the premises, so that the attendant will know to activate the PSAP's own TDD upon receipt of a "silent" call. In rare instances, location information may include notes regarding the occupants of the premises, such as the presence of an invalid, or the

like. Many PSAPs store such information within their own computer aided dispatch ("CAD") systems.

Based on the caller's description of the emergency, as well as the information provided by the ALI/DMS platform (and perhaps from the PSAP's CAD), the attendant dispatches the appropriate public-safety agency to respond to the emergency.

U S WEST maintains four E911 ALI/DMS platforms in Minneapolis, MN, Thornton, CO, Tempe, AZ, and Seattle, WA. Each platform is fully redundant to each of the other three; that is, a query can be routed to any of the four platforms to retrieve the necessary information. They are interconnected by means of a T-1 ring network. Thus, though each PSAP will ordinarily send its queries to a primary platform, it can send them to any of the others, if the primary platform is unavailable.<sup>2</sup> This redundancy ensures the highest possible reliability for the service. The databases are provided and managed by SCC Corporation, of Boulder, CO, pursuant to a contract with U S WEST.

Database inquiries typically involve interLATA transmission, which U S WEST provides by means of circuits leased from interexchange carriers.

PSAPs are governmental agencies set up to field emergency calls. They are the "customers" of E911 service, frequently covering large geographic territories served by numerous public-safety agencies. For example, the Denver metropolitan area is served by 28 PSAPs covering five counties and some 85 different public-

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<sup>2</sup> The system is set up so that a query is routed to an alternate platform if the primary platform does not respond within a defined time period.

safety agencies. Some PSAPs cover territory in multiple LATAs. For example, Park County, Colorado, is a rural, mountainous area lying partially in the Denver LATA and partially in the Colorado Springs LATA; the county is served by a single PSAP. In these situations, callers will frequently be connected to a PSAP in a different LATA; U S WEST provides the facilities for that connection.

Based on the foregoing description, some aspects of E911 service appear to fall within the definition of an "information service."<sup>3</sup> Specifically, the ALI/DMS platforms provide the PSAP with information not directly related to the completion of a telephone call.<sup>4</sup> On the other hand, the information provided by the ALI/DMS platforms is directly related to the fundamental purpose of E911 service, in that it tells the PSAP the location of the emergency, so that the PSAP can dispatch assistance to the proper destination. If the ALI/DMS platforms were left out of the service, the PSAP would receive the information normally forwarded by a tandem switch, but nothing else.

The Act requires a Bell Operating Company ("BOC") to provide "[n]ondiscriminatory access to . . . 911 and E911 services" as a "checklist"

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<sup>3</sup> The Communications Act defines an "information service" as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service." Telecommunications Act of 1996, § 3(20).

<sup>4</sup> By contrast, the selective routing function, which sends a 911 call to the appropriate PSAP, uses stored information to route and complete a telephone call. This function is not an information service because it is used to control and operate U S WEST's telecommunications system and to manage a telecommunications service.

prerequisite to its providing interLATA service.<sup>5</sup> This requirement can extend only to the regulated, telecommunications services offered by the BOC. It would not apply to the information services provided as a part of E911 services because they are also enhanced services and thus not common carrier services,<sup>6</sup> and the Federal Communications Commission ("Commission") does not regulate them under Title II.<sup>7</sup> Indeed, if a BOC were required to move these functions to a separate entity, it could not guarantee nondiscriminatory access to them, particularly if an unaffiliated entity provides those functions.<sup>8</sup>

Thus the decision facing the Commission in this small proceeding has potential implications beyond the scope of either Section 10 of the Act, or E911 service itself. If the Commission wishes to regulate the BOCs' provision of the ALI/DMS functions, it must determine that they are "adjunct to basic"<sup>9</sup> (which would also seem to put them within the exception to the Act's definition of an "information service"). U S WEST believes the Commission has the discretion to

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<sup>5</sup> 47 U.S.C. § 271(c)(2)(B)(vii)(I).

<sup>6</sup> The Commission defines "enhanced services" as "services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that . . . provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information." 47 C.F.R. § 64.702(a).

<sup>7</sup> Id.

<sup>8</sup> Having an unaffiliated entity provide the information-service aspects of E911 could become necessary if the BOC's separate affiliate is not certificated to provide service in all its states.

<sup>9</sup> Services that are "adjunct to basic" are those "which might indeed fall within possible literal readings of [the] definition of an enhanced service, but which are clearly 'basic' in purpose and use and which bring maximum benefits to the public through their incorporation in the network." In the Matter of North American

conclude that all the computer applications of E911 service should be regulated as basic telecommunications services, particularly given the public interest aspects of the service. In making that decision, the Commission should bear in mind its implications.

III. THE COMMISSION SHOULD GRANT U S WEST FORBEARANCE FROM APPLICATION OF SECTION 272 TO E911 SERVICE.

Assuming the Commission chooses to treat the ALI/DMS platform functions as an information service, the Commission should grant U S WEST forbearance from the application of Section 272 of the Act. As interpreted by the Commission, Section 272(h) requires a BOC to utilize a Section 272 separate affiliate to provide interLATA information services pursuant to a Modification of Final Judgment ("MFJ") waiver.<sup>10</sup> The BOCs have been providing E911 service on an interLATA basis pursuant to such a waiver since 1984.<sup>11</sup> Absent forbearance, U S WEST will be required to reconfigure its E911 service so as to provide it on an intraLATA basis, or to move at least portions of the service to a separate affiliate.<sup>12</sup> And, as noted, treating the ALI/DMS aspects of E911 service as an information (enhanced) service would have the effect of deregulating them.

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Telecommunications Association, Memorandum Opinion and Order, 101 F.C.C.2d 349, 359 ¶ 24 (1985).

<sup>10</sup> In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, First Report and Order and Further Notice of Proposed Rulemaking, 5 Comm. Reg. (P&F) 696, 725 ¶ 76 (1996).

<sup>11</sup> United States v. Western Electric Co., Inc., CA 82-0192 (D.D.C. Feb. 6, 1984), Slip Op. at 2.

<sup>12</sup> As noted, the function of routing 911 calls to the appropriate PSAP is not the provision of an information and could remain with U S WEST.

Section 10(a) of the Communications Act requires the Commission to forbear the application of "any provision of [the] Act . . . , if the Commission determines that" —

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) forbearance from applying such provision or regulation is consistent with the public interest.

We will demonstrate below that U S WEST's provision of interLATA E911 service on an integrated basis meets all three criteria. The Commission thus must forbear the application of Section 272 to U S WEST's provision of that service.

- A. The Provision Of E911 Service By Means Of A Section 272 Affiliate Is Not Necessary To Ensure That U S WEST's Charges, Practices, Classifications, Or Regulations In Conjunction With The Service Are Just, Reasonable And Not Unjustly Or Unreasonably Discriminatory.

The first criterion for forbearance requires the Commission to determine that enforcement of the statutory provision is not necessary to ensure just, reasonable and nondiscriminatory charges, practices, classifications, or regulations. In this case, the question to be resolved is whether the provision of E911 service in a separate affiliate is "necessary" for the service to meet these standards. Plainly, it is not.



U S WEST has provided E911 service on an integrated basis for many years.<sup>13</sup> The service is – and always has been – regulated by the state commissions, who are – and always have been – available to hear complaints regarding the reasonableness of the terms and conditions on which U S WEST offers E911 service. Nothing will change if the Commission grants U S WEST forbearance to continue to provide E911 as it always has.

If U S WEST were to provide E911 service through a separate affiliate, the risk of unreasonable or discriminatory terms would not decrease. It indeed might increase, particularly if the state commissions follow the Commission's lead and subject the BOCs' separate affiliates to relaxed regulatory scrutiny.<sup>14</sup>

Providing E911 service through a separate affiliate will have no positive impact on the charges, practices, classifications or regulations by which U S WEST offers that service: it is not a necessary requirement. It would indeed serve no useful purpose.

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<sup>13</sup> This long history distinguishes this Petition (and the E911 Petitions filed by the other BOCs) from the typical forbearance petitions the Commission will receive. The criteria of Section 10(a) appear to contemplate either of two situations: a new service that a carrier wishes to provide in some manner not in accordance with the Act or the Commission's rules, or an existing service that has been subject to a requirement of the Act or the Commission's rules. In those situations, the Commission must predict the effect of forbearance. Here, though, we know the effect of forbearance because U S WEST requests only to be allowed to continue what it has been doing for over a decade. The unknown in this case is the effect of not forbearing the application of Section 272.

<sup>14</sup> See In the Matter of Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate Interexchange Marketplace, CC Docket Nos. 96-149 and 96-61, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, FCC 97-142, rel. Apr. 18, 1997 ¶ 82. (determining

**B. The Provision Of E911 Service By Means Of A Separate Affiliate Is Not Necessary For The Protection Of Consumers.**

The same considerations compel the conclusion that this Petition meets the second criterion for forbearance. State commissions have regulated E911 service to ensure it is available and that the public does not overpay for it. Allowing U S WEST to continue to provide E911 as it always has will not jeopardize that situation.

If, however, the Commission were to deny U S WEST's Petition, consumers would almost certainly suffer, because U S WEST would be required to reconfigure its E911 service either to carve out pieces of the service for provision by another entity, or to provide it on an intraLATA basis. Implementing either solution would adversely impact the interests of consumers.

The only aspect of E911 service that may fairly be considered an interLATA information service is the function of retrieving information regarding the location from which the emergency call was placed.<sup>15</sup> That function (interLATA transport and the operation of the ALI/DMS platforms themselves) could theoretically be moved to a separate affiliate, once that separate affiliate receives certification to provide telecommunications services in all of U S WEST's states.<sup>16</sup> Dividing the

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that the BOCs' interLATA affiliates would be regulated as "non-dominant" carriers).

<sup>15</sup> The selective routing function, by which U S WEST connects a 911 caller to the appropriate PSAP is a pure telecommunications function.

<sup>16</sup> U S WEST's proposed interLATA affiliate has not yet received certification to provide service in any of its states. Commission rules in Colorado can be read to require an E911 provider to be a certificated local exchange service provider. 4 CCR 723-29, Rules 1(B)(1) and 3(1). U S WEST's proposed interLATA affiliate has no current plans to seek such certification.

E911 service in this manner will, however, inevitably drive up the cost of providing it. If nothing else, the employees who manage the integrated service today would have to be duplicated, at least in part, within the separate affiliate. In addition, dividing the service will require the PSAPs to deal with separate providers, thus increasing their administrative and operational costs.

Reconfiguring E911 service to provide it on an intraLATA basis would be far worse, in that it would require U S WEST to put E911 ALI/DMS platforms in each of its twenty-seven LATAs. To ensure some measure of redundancy, U S WEST would place at least two identical databases in each LATA. We estimate that creating these additional fifty databases would cost some \$30 to \$40 million, while the cost of maintaining them would run to some \$80 million per year, compared to the \$7 million U S WEST spends to maintain its existing platforms.<sup>17</sup>

The additional costs of providing E911 service on a separated or intraLATA basis would, of course, ultimately be borne by the consumers who pay for the system. In return for that added cost, consumers receive no benefit whatever. Thus, not only is enforcement of this provision not necessary to protect consumers, enforcing the provision will positively harm consumers. This is particularly so given the relatively brief period of time – no more than two and one-half years – that E911 service would be subject to the separation requirement.<sup>18</sup>

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<sup>17</sup> If the Commission were to conclude, contrary to U S WEST's assessment, that the selective routing function of E911 is an information service – thus requiring U S WEST either to provide the entire service on an intraLATA basis, or move it to a separate affiliate – the costs of compliance would become much greater.

<sup>18</sup> The separate affiliate requirement for the provision of interLATA information services expires in February, 2000. Telecommunications Act of 1996 § 272(f)(2).

C. Forbearance Is In The Public Interest.

The final criterion for forbearance is the public interest.<sup>19</sup> In this case, the Commission will serve the public interest by granting forbearance. The Commission has long recognized the vital public interest in maintaining and enhancing E911 services:

Dialing 911 is the most effective and familiar way the American public has of finding help in an emergency. Since it was first introduced in 1968, 911 service has spread across the Nation and become synonymous with emergency assistance. . . . E911 saves lives and property by helping emergency services personnel do their jobs more quickly and efficiently.<sup>20</sup>

As we have demonstrated, requiring U S WEST to provide E911 service on a separated or intraLATA basis will impose additional costs on the public. Those costs would do nothing to improve the service, and they would be expended to establish a serving configuration that will be necessary for only a short period of time. In these circumstances, denying the Petition would disserve the public interest.

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<sup>19</sup> In assessing this criterion, the Commission must consider whether forbearance "will promote competitive market conditions," including whether it will "enhance competition among providers of telecommunications services." *Id.* at § 10(b). A determination that forbearance will enhance competition is sufficient to allow the Commission to find that the Petition meets the public interest criterion. A contrary determination, however, does not require the Commission to find that the Petition does not meet the public interest. In this case, forbearance will have no impact on competition. U S WEST seeks merely to continue providing E911 service as it always has.

<sup>20</sup> Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, 11 FCC Rcd. 18676, 18678-79 ¶¶ 3-5 (1996); *cf.*, Letter, Gary M. Epstein, Common Carrier Bureau, to Alfred A. Green, AT&T (Dec. 30, 1982) (granting the BOCs a waiver of Commission rules to enable them to continue to provide E911 on an integrated basis because the "possible detriment of the public interest in disrupting these services . . . is large.")

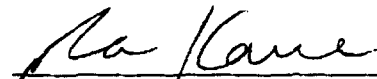
IV. CONCLUSION

For the reasons stated, the Commission should promptly grant U S WEST's Petition, so that it may continue to provide E911 service on an integrated basis.

Respectfully submitted,

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By:



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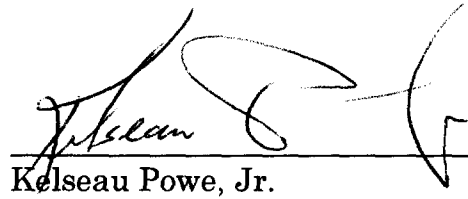
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Dan L. Poole

June 30, 1997

## CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 30<sup>th</sup> day of June, 1997, I have caused a copy of the foregoing **SUPPLEMENTAL PETITION FOR FORBEARANCE** to be served via hand-delivery upon the persons listed on the attached service list.



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